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8	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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10	STATE OF CAL	LIFORNIA
11		N 2012 - 721
12		ase No. 2012-731
13	MARY ANN MAHONEY aka MARYANN CANTWELL	COLICATION
14	Santa Rosa, CA 95404	CCUSATION
15	Registered Nurse License No. 432051	•
16	Respondent.	
17	Complainant alleges:	
18	PARTI	FS
19	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her	
20	official capacity as the Interim Executive Officer of the Board of Registered Nursing, Departmen	
21	of Consumer Affairs.	
22	2. On or about August 31, 1988, the Board of Registered Nursing issued Registered	
23	Nurse License Number 432051 to Mary Ann Mahoney, aka Maryann Cantwell ("Respondent").	
24	The Registered Nurse License was in full force and effect at all times relevant to the charges	
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26	brought herein and will expire on March 31, 2014, unless renewed.	
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	II .	•

JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

DISCIPLINARY STATUES

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
 - 7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

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Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

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- "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."
 - 8. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for selfuse in humans or animals, and includes the following:

- (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
- (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ------," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
- (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.
- 9. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052...

10. Health and Safety Code section 11173 provides:

- "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (b) by concealment of a material fact.
- (b) No person shall make a false statement in any prescription, order, report, or record, required by this division.
 - (c) No person shall, for the purpose of obtaining controlled substances, falsely assume

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the title of, or represent himself to be a manufacturer, wholesaler, pharmacist, physician, dentist, ... or other authorized person."

COST RECOVERY

Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

STATEMENT OF FACTS

- At all relevant times, Respondent was employed as a registered nurse at Santa Rosa Memorial Hospital, Santa Rosa, California.
- On or about November 22, 2010, Respondent called in an unauthorized prescription 13. to CVS Pharmacy, Santa Rosa, for 30 tablets of Norco 10¹ plus one refill, for her husband. Respondent falsely reported that Dr. EW was the prescribing physician. Respondent's husband denied knowledge of the Norco 10 prescription and/or consumption of this narcotic.
- On or about November 28, 2010, Respondent called in an unauthorized prescription to Walgreens Pharmacy, Santa Rosa, for 30 tablets of Norco 10 for her husband. Respondent falsely reported that Dr. AC was the prescribing physician. Respondent's husband denied knowledge of the Norco 10 prescription and/or consumption of this narcotic.
- On or about December 6, 2010, Respondent called in an unauthorized prescription to Rite Aid Pharmacy, Santa Rosa, for 60 tablets of Norco 10 for her husband. Respondent falsely reported that Dr. EB was the prescribing physician. Respondent's husband denied knowledge of the Norco 10 prescription and/or consumption of this narcotic.

¹ Norco 10 is an opiate prescribed for the treatment of moderate to severe pain. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a medication that can be habit forming and has associated side-effects of dizziness, lightheadedness and difficulty

in concentrating.

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- 16. On or about December 8, 2010, Respondent called in an unauthorized prescription to Rite Aid Pharmacy, Santa Rosa, for 60 tablets of Norco 10 for her husband. Respondent falsely reported that Dr. EB was the prescribing physician. Respondent's husband denied knowledge of the Norco 10 prescription and/or consumption of this narcotic.
- 17. On or about December 15, 2010, Respondent called in an unauthorized prescription to the Safeway Pharmacy, Santa Rosa, for 30 tablets of Norco 10, plus one refill for her husband. Respondent falsely reported that Dr. EB was the prescribing physician. Respondent's husband denied knowledge of the Norco 10 prescription and/or consumption of this narcotic.
- 18. On or about December 26, 2010, Respondent called in an unauthorized prescription to the Target Pharmacy, Santa Rosa, for 60 tablets of Norco 10, plus one refill for her husband. Respondent falsely reported that Dr. EB was the prescribing physician. Respondent's husband denied knowledge of the Norco 10 prescription and/or consumption of this narcotic.
- 19. From July 14, 2010, to December 15, 2010, Respondent had filled 32 separate prescriptions for Norco 10, [27 for herself and 5 for her husband], receiving a total of 1,580 tablets of Norco 10 during an approximate six month period.
- 20. From December 27, 2010 to June 27, 2011, Respondent had filled 14 separate prescriptions for Norco 10 [12 for herself and 2 for her husband], receiving a total of 1,005 tablets of Norco 10 during an approximate six month period.
- 21. From July 11, 2011 to December 30, 2011, Respondent had filled 17 separate prescriptions for Norco 10, receiving a total of 840 tablets of Norco during this period of time.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Unauthorized Prescriptions for Narcotics)

22. Respondent is subject to discipline for unprofessional conduct pursuant to Code section 2761(a), as defined in section 2762(a) and Health and Safety Code section 11173, in that she obtained/possessed and/or prescribed controlled substances without physician authorization. The facts in support of this cause for discipline are set forth above in paragraphs 12 through 18.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Falsified Records)

23. Respondent is subject to discipline for unprofessional conduct pursuant to Code section 2761(a), as defined in section 2762(e), in that she called in prescriptions for controlled substances that were unauthorized. The facts in support of this cause for discipline are set forth above in paragraphs 12 through 18.

THIRD SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Excessive Use of a Controlled Substance)

24. Respondent is subject to discipline for unprofessional conduct pursuant to Code section 2761(a), as defined in section 2762(b), in that she used a controlled substance in a manner that was dangerous and/or injurious to herself and/or impaired her ability to conduct safely with the public in the practice of nursing. The facts in support of this cause for discipline are set forth above in paragraphs 12 and 19 through 21.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 432051, issued to Mary Ann Mahoney, aka Maryann Cantwell;
- 2. Ordering Mary Ann Mahoney, aka Maryann Cantwell to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: June 6, 2012

LOUISE R. BAILEY, M.ED. F

Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs

State of California Complainant

SF2012203993